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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 815.

HARVEY F. EUGE,
Petitioner,

vs.

STATE OF MISSOURI,
Respondent.

MOTION FOR LEAVE TO FILE PETITIONER'S PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI OUT OF TIME

HARVEY F. EUGE,
P. O. Box 1932,
St. Louis 18, Missouri,
Petitioner Pro Se.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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OUT OF TIME

Comes now the petitioner and respectfully moves this Honorable Court to permit the filing of petitioner's petition for rehearing of order denying petition for writ of certiorari NUNC PRO TUNC; or for leave to file the said motion for rehearing out of time for the following reasons, to wit:

1. That petitioner first received notice from the Clerk of the Supreme Court of the United States that said motion was out of time at 2:45 P. M. on the 30th day of April, 1963, which was dated and postmarked April 29, 1963.

2. That this was a great surprise to petitioner for he had not received the return receipt of the certified mail Number 866784.

3. That petitioner exerted all due diligence and efforts at his command to have the said motion printed in due time; that due to the heavy run of business by the printer, the printing of said copies of said motion was delayed thereby.

4. That immediately after the printing of said motion for rehearing and timely service of a copy thereof to the Prosecuting Attorney's Office of the County of St. Louis, Missouri, petitioner personally traveled a distance of about 15 miles out of his way to have the post office branch at the Lambert Air Field Airport located in the County of St. Louis, Missouri, to receive the parcel containing the 40 copies of said motion for rehearing for Air Mail Delivery, Washington, D. C., in time for said motion to arrive in the Office of the Clerk of the Supreme Court of the United States within the last day of the time allocated for the filing of said motion for rehearing.

5. That the said parcel of mail containing said 40 copies of said motion for rehearing was personally delivered for mailing by petitioner at the AIRPORT MAIL FACILITY or "Pouch Room" at Lambert Air Field of St. Louis Missouri Post Office as evidenced by certified mail receipt number 866784; which is herewith attached and made a part of this motion; at 8:30 P. M. on Thursday, April 25, 1963 and immediately deposited in the designated pouch

in ample time to be on flight Number 448 leaving at 10:20 P. M. expected to arrive in Washington, D. C. on the 26th day of April, 1963 at approximately 2:31 A. M. to be delivered to the said Clerk's office the same day.

6. That earlier in the day, petitioner had called the airmail section of the Main Post Office, located at 18th and Market Streets in the City of St. Louis, Missouri, about 15 miles from the airport facility and was informed by the clerk thereof that there were two flights to Washington, D. C.; one, at 8:44 P. M.; and another, at 9:05 P. M.

7. That at the Airport Facility he was informed that flight Number 448 would leave at 10:20 P. M. and would arrive in Washington, D. C. at 2:31 A. M. for regular delivery on the same day, by another clerk of the post office who was well known to petitioner to be a postal employee of long standing and efficient in his handling of the airmail flight schedules when petitioner, many years ago, was a temporary postal employee as an interstation dispatch driver, and had many times made the same airmail runs from the Main Post office at 18th and Market Streets to the Airport Mail Facility at Lambert Field, which runs are made every hour of the day.

8. That the delay in the arrival of said parcel containing said copies of said motion was not due to willful delay or lack of diligence on the part of petitioner herein and that said petitioner had no control over the conditions heretofore set forth.

9. Petitioner states that grave injustice would be done him and due process of law denied him if this Honorable Court refused to permit him leave to file his said petition for rehearing out of time and that the court should and ought to permit petitioner to file said petition out of time or NUNC PRO TUNC so as to be within the time allowed by the rules of this court.

WHEREFORE the premises considered petitioner prays this Honorable Court to grant him leave to file his petition for rehearing of order denying petition for writ of certiorari out of time or in the alternative to file the same NUNC PRO TUNC.

Respectfully submitted,

HARVEY F. EUGE.

Subscribed and sworn to before me a notary public this ..... day of May, 1963.